

**UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MASSACHUSETTS**

<b>ELI MISTOVICH, Jr.</b> <div style="text-align: right; padding-right: 20px;"><b>Plaintiff</b></div>	)	
<b>V.</b>	)	<b>CIVIL ACTION NO. 04-12340-EFH</b>
<b>ELIZABETH BOWDEN, STEPHEN URBAN, STEPHEN NEVERO and ALISON LEATON,</b> <div style="text-align: right; padding-right: 20px;"><b>Defendants</b></div>	)	

**STIPULATION, STATEMENT OF ISSUES AND WITNESSES**

**Stipulation**

Pursuant to the Court's Order of January 9, 2006, the parties to the above action hereby stipulate as follows for purposes of the above action:

1. Plaintiff Eli Mistovich, Jr. is a resident of Londonderry, New Hampshire.
2. The Massachusetts Bay Commuter Railroad ("MBCR") is a limited liability corporation with its principal place of business in Boston. On July 1, 2003, MBCR succeeded Amtrak in operating the MBTA's commuter rail services in the greater Boston area.
3. After being awarded the MBTA contract and succeeding Amtrak, MBCR offered employment to almost all Amtrak union and management employees below the highest level who had worked on the MBTA's commuter rail contract as of a certain date. Approximately 1600 Amtrak employees, including Plaintiff Mistovich, transitioned their employment to MBCR to operate the commuter railroad on and after July 1, 2003.
4. Defendant Elizabeth Bowden is presently a resident of Canada and a Canadian

citizen. Defendant Bowden was employed by MBCR from September of 2003 through July of 2005 as Manager of Organizational Development. In that position, her duties were to lead and coordinate MBCR's Human Resources functions.

5. Defendant Stephen Urban has been employed by MBCR since May of 2003. His initial position was the Assistant Manager of Transportation. In January of 2004, he became the Deputy General Manager.

6. From July of 2003 through the present, Defendant Stephen Nevero has worked as a contract consultant with MBCR. He has served in the position of Chief Engineer overseeing maintenance and construction of tracks, bridges, buildings and the signal system. Defendant Nevero was Plaintiff's immediate supervisor when Plaintiff worked for MBCR.

7. Alison Leaton is a resident of Brighton, Massachusetts. Between September of 2003 and April of 2004, Alison Leaton worked at MBCR as a contract recruiter, assisting in hiring applicants to fill open positions.

8. Plaintiff was involuntarily terminated from his employment by MBCR on March 30, 2004.

#### **Statement of Issues to be Tried**

This is a tort action against each of the defendants for intentional interference with advantageous relations. This is not a claim against the Massachusetts Bay Commuter Railroad Company, plaintiff's former employer. Instead, Plaintiff brings this claim against three individuals who worked for the Massachusetts Bay Commuter Railroad Company: specifically, his former supervisor, Stephen Nevero; Mr. Nevero's supervisor, Stephen Urban; and the former head of human resources, Elizabeth Bowden.

The issue to be tried with respect to each defendant is whether that defendant's actions in connection with the termination of plaintiff's employment by MBCR on March 30, 2004, constituted interference with advantageous relations under the laws of Massachusetts. To establish such a claim against any particular defendant, a plaintiff must show four elements:

1. That the plaintiff had an advantageous employment relationship with his employer.
2. That the defendant knowingly induced the employer to break that relationship.
3. That the defendant's interference, in addition to being intentional, was improper in motive or means and rose to the level of actual malice; and
4. That the plaintiff employee was harmed by the defendant's actions.

Weber v. Community Teamwork, Inc., 434 Mass. 761, 781, 752 N.E. 2d 700, 715 (2001).

In this case the first element is not in dispute. Defendants Nevero, Urban and Bowden concede that the Plaintiff worked for the Massachusetts Bay Commuter Railroad Company. At issue for each individual defendant, whose liability is to be assessed separately, is whether that defendant intentionally induced MBCR to terminate plaintiff's employment, and if so, whether he or she acted based on improper motive or means that rose to the level of "actual malice," and whether such interference resulted in Plaintiff suffering harm.

#### **Witnesses**

Plaintiff:

Eli Mistovich, Jr., 5 Leelyn Circle, Derry, NH (603) 437-3349;

Elizabeth Bowden, 48 Spenser Crescent; Guelph, Ontario, Canada, N1L2M1;

Stephen Urban, c/o Massachusetts Bay Commuter Railroad Co. (“MBCR”), 89 South St. Boston, MA 02111;

Stephen Neverro, c/o MBCR (same as Stephen Urban above);

Alison Leaton, 25 Mount Hood Road, No. 10, Brighton, MA, (617) 277-4628;

Suzanne Allen, Manager, Amtrak Human Resources, 253 Summer Street, Boston, MA 02210, (617) 345-7612.

Kevin Gahagan, Head of Human Resources, Brigham and Woman’s Hospital, 75 Francis Street, Boston, MA, (617) 732-5500;

Bradley Winter, Vice General Chairman, Brotherhood of Maintenance Employees, P.O. Box 89, Danvers, MA 01923, (978) 774-0254;

Courtney Clark, 9 Woodland Drive, Kingston, NH, 03848, (603) 642-5060;

John Prugh, Massachusetts Bay Commuter Rail Program Director, c/o Massachusetts Bay Commuter Railroad, 89 South Street, 8<sup>th</sup> Floor, Boston, MA 02111; (603) 888-3752

Harold Hoffman, Crew Dispatcher Supervisor, MBCR, 32 Cobble Hill Road, Somerville, MA 02143;

Fran O’Connor, MBCR employee, 81 King Street, Norfolk, MA 02056;

Gerry DeModena, MBCR employee, 127 St. Andrew Road, East Boston, MA 02128; (617) 561-0931.

Defendants:

Elizabeth Bowden (see above);

Stephen Urban (see above);

Stephen Nevero (see above);

Alison Leaton (see above);

Elizabeth Trowbridge c/o MBCR;

Eli Mistovich (see above).

Defendants note that they do not hereby concede that each of the witnesses on plaintiff’s list has admissible testimony. Defendants anticipate moving to exclude certain witnesses

from testifying.

Respectfully submitted,

Eli Mistovich, Jr.,  
by his attorney:

/s/ Frank J. Teague  
Frank J. Teague, Esq., BBO#493780  
Frank J. Teague & Associates  
One Liberty Square, 4<sup>th</sup> Floor  
Boston, MA 02109  
(617) 350-7700

Elizabeth Bowden, Stephen Urban  
and Stephen Nevero,  
By their attorneys:

/s/ Laurie F. Rubin  
Walter B. Prince, Esq., BBO#406640  
Laurie F. Rubin, Esq., BBO# 564947  
Prince, Lobel, Glovsky & Tye LLP  
100 Cambridge Street, Suite 2200  
Boston, MA 02114  
(617) 456-8000

Dated: June 5, 2006